THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.19940 OF 2005

DATED 30.09.2005

BETWEEN

M/S.Kirlampudi Sugar Mills Limited

…Petitioner

and

Assistant Cane Commissioner (FAC), Samalkot,

East Godavari District.

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.19940 OF 2005

ORDER:

M/s.Kirlampudi Sugar Mills Limited (KSML) assails the auction notice dated 01.09.2005 issued by sole respondent proposing to conduct open auction for the sale of agricultural land admeasuring Acs.12.96 and for the sale of Acs.1.00 of land in factory premises in Survey No.633 of Pithapuram as illegal, arbitrary and violative of Article 14 of Constitution of India. Be it noted, the respondent issued the impugned notification dated 01.09.2005 under A.P.Revenue Recovery Act, 1864 (for short, Revenue Recovery Act) for realization of sugarcane price payable to growers and purchase tax to the Government by KSML.

In the affidavit filed by managing Director of KSML, the following is revealed. Initially the sugar factory of the petitioner was under the management of M/s.Gannon Dunkerly Company Limited, Mumbai upto June, 2002. A lockout was affected in the sugar factory from January, 2000 to September, 2002. Subsequently, in 2002, Chakilam Group, Hyderabad took over the company, dismantled sugar factory and running distillery unit from September, 2003 onwards. The respondent issued a notice on 07.08.2004 to the petitioner directing to pay the dues towards cane price and purchase tax dues for three seasons from 1996-1997 to 1998-1999 with penalty. The petitioner was also informed that if it fails to clear all the dues specified in the said notice, action would be initiated for recovering the amount under Revenue Recovery Act. The petitioner made a representation, pursuant to which the Commissioner of Sugar and Cane Commissioner, Government of Andhra Pradesh addressed a letter to the Government on 17.10.2002 to consider the request of the petitioner for waiver of purchase tax, the same was not granted. The respondent therefore issued notice under Section 36 of Revenue Recovery Act to conduct auction of lands admeasuring Acs.22.96 on 13.06.2005. The petitioner assailed the same in W.P.No.12221 of 2005 while simultaneously approaching the respondent to postpone the auction. The petitioner admits that it is liable to pay the growers dues for sugarcane and also liable to pay the purchase tax to the Government as per A.P.Sugarcane (Regulation of Supply and Purchase) Act, 1961.

It appears the respondent agreed to postpone the auction on condition of the petitioner paying the cane price and cane development council fund. The petitioner gave three cheques for Rs.7,55,080/-, Rs.7,00,000/- and Rs.4,64,426/-. All the three cheques were dishonoured by the bankers, whereupon the petitioner allegedly paid a sum of Rs.3,00,000/- by depositing cash on 22.07.2005. It appears the petitioner also approached the Government of Andhra Pradesh requesting to permit the payment in instalments. At this stage the respondent issued the impugned auction notice under Revenue Recovery Act.

In the affidavit filed by the Managing Director, a reference is made to respondents 1 to 3 but actually and factually the Assistant Cane Commissioner (FAC), Samalkot, East Godavari District alone is arrayed as sole respondent and this defect has not been rectified. The Government of Andhra Pradesh and Cane Commissioner are not shown as respondents and therefore no direction can be issued and no order can be passed against them.

The learned counsel for the petitioner, Sri V.V.N.Narayana Rao, has not made out any legal submission in support of the writ petition. Indeed, he fairly argued that the petitioner is running only distillery unit, which is facing financial problems and therefore if some time is granted the petitioner would clear the cane price dues as well as purchase tax dues subject to the Government considering the representation of the petitioner company for waiver of purchase tax. He repeatedly submits that the petitioner is not denying its obligation to pay these dues. Indeed, he pointed out at paragraph 5 in the affidavit where the Managing Director conceded that the petitioner company has an obligation to pay the cane price and cane development council fund.

The respondent cannot be said to have acted arbitrarily or in contravention of any provisions of the Act or Rules. The Department of Sugar and Cane had been making efforts to realise cane price, cane development council fund and purchase tax since 1996-1997. When initially a notice in form No.7 under Section 36 of Revenue Recovery Act was issued, the petitioner approached this Court by filing writ petition. When the respondent allowed the petitioner to pay the dues in instalments, he gave three cheques, which were dishonoured. This is a strong circumstance, which would show that the petitioner has approached this Court with unclean hands and is not entitled for any discretion of this Court in its favour. The submission that the fixation of upset price is arbitrary, is also without any substance. This Court is of considered opinion that as and when the respondent initiates action for recovery of the dues to cane growers and to the Government, the petitioner is approaching this Court or making representations without any sincere efforts to clear off the dues.

The petitioner has failed to show any illegality or infirmity in the action initiated by the respondent. The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.09.2005.

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